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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re

METAWISE GROUP, INC.,  
DRACO RESOURCES, INC.,

Debtors.

Case Nos. 14-31652-DM  
14-31654-DM

Chapter 11

**MOTION FOR ORDER AUTHORIZING  
DEBTOR TO (1) PAY PRE-PETITION  
EMPLOYEE WAGES; AND (2) HONOR  
VACATION AND SICK LEAVE  
OBLIGATIONS**

- ☐ Affects **METAWISE**  
☐ Affects **DRACO**  
☒ Affects **BOTH DEBTORS**

Date: December 15, 2014  
Time: 1:30 p.m.  
Place: 235 Pine Street  
Courtroom 22  
San Francisco, CA 94104  
Judge: Hon. Dennis Montali

**I. INTRODUCTION**

Metawise Group, Inc. (“Metawise”) and Draco Resources, Inc. (“Draco”, and together with Metawise, the “Debtors”), the joint Debtors and debtors-in-possession in the above captioned Chapter 11 reorganization cases hereby jointly move for an order authorizing the Debtor to pay wages accrued pre-petition and authorizing the Debtor to honor pre-petition employee vacation and sick leave benefits (the “Payroll Motion”).

1 The Payroll Motion is based on the Memorandum of Points and Authorities set forth  
2 herein, the DECLARATION OF SONGQIANG CHEN IN SUPPORT OF INITIAL MOTIONS (the “Chen  
3 Declaration”), filed concurrently herewith and incorporated herein by this reference, the pleadings  
4 and papers on file herein, and upon such oral and documentary evidence as may be presented at  
5 the hearing on the Payroll Motion. By a separate application, Debtors have requested an order  
6 shortening time for notice and setting a hearing on this matter on an expedited basis.

## 7 **II. JURISDICTION**

8 On November 12, 2014 (the “Petition Date”), the Debtors filed their voluntary petitions for  
9 relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the  
10 United States Bankruptcy Court for the Northern District of California.

11 The Court has jurisdiction over this case and this Payroll Motion pursuant to 28 U.S.C.  
12 §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue  
13 is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409(a).

14 The statutory predicate for the relief requested herein is 11 U.S.C. §§ 105(a), 363(b) and  
15 507(a).

## 16 **III. FACTS**

### 17 **A. Background of the Debtors**

18 Metawise is a California corporation duly organized under the laws of the state and was  
19 incorporated on or about February 25, 1997. Draco is a wholly owned subsidiary of Metawise,  
20 formed in 2013. Metawise is an international trading company specializing in the procurement  
21 and supply of key raw materials for the global steel industry and recycled material such as plastic,  
22 paper, and scrap metal. Metawise has customers all over the globe, with many important and  
23 close relationships with high profile companies in the Chinese steel industry. Over the years, the  
24 company shipped hundreds of thousands of tons of chrome, manganese, and iron ores to China.

25 In early 2010, Metawise entered into a purchase and sale agreement with Greenfield  
26 Environmental Multistate Trust LLC (“Greenfield”) for the purchase of “Iron Ore Fines” located  
27 at a plant in Theodore, Alabama, near Mobile (the “Mobile Facility”). These Iron Ore Fines are a  
28

1 byproduct of a former titanium extraction process at the Mobile Facility, and are an excellent iron  
2 source for the steel industry.

3 At the time Metawise entered into the Greenfield contract, there were at least 3 million  
4 metric tons of Iron Ore Fines at the former Mobile Facility. Metawise agreed to pay Greenfield  
5 for the right to remove the Iron Ore Fines, with the intent of shipping them to customers in China.  
6 The Greenfield Contract is currently scheduled to expire in March of 2015. This project is  
7 Metawise's only current operation.

8 Metawise hired Progressive Environmental Services, Inc. dba Eagle-SWS ("SWS") as its  
9 general contractor to manage the operation of this project. SWS was responsible for the material  
10 onsite operations and overall logistics. These responsibilities included delivering the material  
11 from the site to the nearest shipping terminal, operated by Millard Maritime Services ("Millard").

12 Unfortunately, the project immediately ran into difficulties, resulting in substantial delays.  
13 This led to disputes with SWS and Millard. Despite Metawise's contention that SWS mismanaged  
14 the project, SWS obtained a judgment in the amount of approximately \$2.3 million, primarily as a  
15 result of an unconditional indemnification issued by Metawise in favor of SWS. As a result of the  
16 SWS lawsuit, the Debtors have been unable to make any progress on the project. This, combined  
17 with aggressive enforcement tactics by SWS, forced the present bankruptcy filing.

18 The only solution to the crisis created by the SWS lawsuit was to establish a new company  
19 that would be able to step in and restart the project. Draco was created to "put a new face" on  
20 Metawise in an effort to attract new customers and raise money to restart the Mobile project.  
21 Draco Resources was incorporated in California in August 2013. It is a wholly owned subsidiary  
22 of Metawise. There were 3 million metric tons of material and considerable value to be realized,  
23 but it was necessary to have a company other than Metawise undertaking these efforts. At the  
24 same time, the creation of Draco as a subsidiary of Metawise protected the rights of Metawise's  
25 creditors to any value that can be created through restarting the Mobile project.

26 **B. Current Status**

27 The contract with Greenfield is Metawise's largest asset. Metawise spent more than \$25  
28 million in its initial efforts to get the project up and running and efforts to get it back on track

1 since the first failed effort to transport materials. The Mobile project will be key to any successful  
2 reorganization.

3 Metawise and Draco do not have any secured lenders. The Mobile project was funded  
4 through pre-payments by customers for the product to be delivered. This is standard in the  
5 Debtors' industry. These pre-payments were used as the necessary capital and financing to fund  
6 the project's operations. Customers who pre-paid are also Metawise's largest creditors,  
7 collectively holding claims of approximately \$30 million, as a result of pre-payments for material  
8 that Metawise has so far been unable to deliver as a result of the difficulties with the Mobile  
9 project. Metawise anticipates that the customers will be supportive of its efforts to reorganize in  
10 bankruptcy, because reorganization and re-starting the Mobile project presents their only hope to  
11 receive anything on account of the money they have already paid to the Debtor. If the Mobile  
12 project is not restarted, the customers will not receive any of the product they paid for, and  
13 Metawise has no money to repay these customers.

14 Metawise entered into an agreement with Draco that provided Draco would be responsible  
15 for arranging the removal and transport of the Iron Ore Fines that Metawise was entitled to under  
16 the Greenfield contract. The sole purpose of establishing Draco was as an operating company to  
17 restart the work on the Mobile project and begin shipping material to customers. Restarting the  
18 project would also provide the necessary revenue to sustain the operations and pay Metawise's  
19 creditors.

20 In order to restart the Mobile project, the Debtors need to locate funding. They have been  
21 in discussions for some time with Armco Metals Holding, Inc. ("Armco"), a publicly traded  
22 Nevada corporation, for this purpose. The original plan for a merger with Armco through a stock  
23 exchange transaction has been halted by SWS's collection efforts and the bankruptcy filing. The  
24 Debtors' objective is to find a way to structure a plan around a merger with Armco, although they  
25 remain open to other funding options.

26 **C. Filing Of Bankruptcy And Reorganization Efforts**

27 Because of the aggressiveness of SWS's collection strategy, and the Debtors' inability to  
28 pay the judgment, bankruptcy was the only logical decision for Metawise and Draco. Chapter 11

1 filings were the only option to control the process and prevent SWS's collection efforts from  
2 immediately causing the company to implode. The objective is that bankruptcy will allow the  
3 necessary space for Metawise and Draco to raise the necessary capital through an agreement with  
4 Armco, which in turn will provide a reasonable basis for Metawise and Draco to negotiate with  
5 Greenfield for an extension of the Greenfield contract.

6 In the meantime, Metawise and Draco are working to establish smaller working  
7 agreements that will provide additional money to help sustain operations, including an agreement  
8 for Draco to supply woodchips to a customer. Any such contracts will only provide a modest  
9 amount of revenue, which will help cover the operating expenses of the business.

10 The outcome of the case will turn on whether Metawise and Draco are able to restart the  
11 Mobile project and start shipping iron ore. Once the project is restarted, the companies can begin  
12 delivering qualified material. Once the Mobile project has been restarted and material is being  
13 shipped, Metawise and Draco believe that they will be able to find additional new customers to  
14 purchase more of the material. These revenues will be used to sustain operations and to fund  
15 payments to creditors.

16 **D. Employees and Payroll**

17 The Debtors have pared down their workforce as a result of their financial situation, and  
18 currently have only three employees. All three employees are employed by Draco as the operating  
19 company. Metawise does not have any paid employees. The officers of the Debtors' are not  
20 compensated in their role as officers because of the financial hardship of the companies.

21 The employees are paid monthly, on the first business day of the following month.  
22 Monthly payroll is approximately \$13,400 for all three employees. The Debtors failed to pay the  
23 payroll due November 1, 2014, for the month of October. The next payroll date fell on  
24 December 1, 2014, for the month of November, and thus included both the post-petition period  
25 from November 13 through November 30, and the pre-petition period from November 1 through  
26 November 12. The employees are therefore owed prepetition wages for the period from  
27 October 1, 2014, through November 12, 2014.

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1 In the case of each of the three employees, their pay for the 43-day pre-petition period  
2 from October 1 through November 12 would be less than \$7,500. Even including sick leave and  
3 vacation entitlements, no employee is entitled to an amount in excess of \$11,725. The total  
4 amount required to pay prepetition wages owed is approximately \$18,700.

5 Further, the Debtors believe that it is important to honor their employee benefit obligations  
6 to the fullest extent permissible. If the Debtors are permitted to honor benefit obligations up to an  
7 aggregate of \$11,725 (less the amount of any paid pre-petition wages), this will allow the  
8 employees to enjoy full benefits. This will be a significant factor in sustaining employee morale  
9 and loyalty in the face of this bankruptcy filing.

#### 10 **I. RELIEF REQUESTED**

11 The Debtors seek authority to promptly pay the full amount of all wages accrued pre-  
12 petition to all employees, in the approximate amounts set forth above. The Debtors also seek  
13 authority to honor all vacation and sick leave benefit obligations to the employees.

14 The Debtor's proposed order is attached hereto as **Exhibit A**.

#### 15 **IV. BASIS FOR RELIEF REQUESTED**

16 The Debtors believe that it is critical that the employees receive their pay in full, and  
17 without any further delay notwithstanding the bankruptcy filing. Draco therefore seeks to honor  
18 its obligations to employees post-relief and intends to assume them under any plan of  
19 reorganization.

20 It is generally recognized that the continuation of a stable employee base and harmonious  
21 employee relations in operating a Chapter 11 case are critical to a successful reorganization. As  
22 the court noted in In re Chateauguay Corporation, "[e]mployee good will and contentment is an  
23 asset which is vital to the continuation of a debtor's business operations and its ability to  
24 effectively reorganize during the Chapter 11 process." 116 B.R. 887, 898 (Bankr. S.D.N.Y. 1990)  
25 (citations omitted). Here, further delay in funding payroll for October and the first two weeks of  
26 November will likely create panic and discontent among the employees, sabotaging the Debtors'  
27 effort to reorganize.

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1 Cases have permitted unequal treatment of pre-petition debts when necessary for  
2 rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice  
3 premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and  
4 (iv) peripheral benefits under labor contracts. In re Adams Apple, 829 F.2d 1484, 1490 (9th Cir.  
5 1987). This is especially appropriate in the case of honoring priority claims that would otherwise  
6 be paid prior to general unsecured creditors in any case.

7 The Debtor also has a duty under 28 U.S.C. § 959(b), which requires a debtor-in-  
8 possession to manage and operate the property in its possession in accordance with applicable  
9 state law. Applicable California law requires an employer to pay all wages timely and imposes  
10 penalties for failure to do so. Specifically, California Labor Code § 204 requires an employer to  
11 timely fund semi-monthly wages, and California Labor Code §§ 203 and 203.1 impose penalties  
12 for failure to pay or the dishonor of paychecks.

13 Numerous Chapter 11 cases in this district have authorized a debtor-in-possession to pay  
14 pre-relief wages and benefits so long as it does not exceed the statutory priority cap under 11  
15 U.S.C. § 507(a)(4). See, e.g., In re Pacific Metro, LLC, Case No. 10-55788-RLE (Bankr. N.D.  
16 Cal. June 15, 2010); In re Heller Ehrman, LLP, Case No. 08-32514-DM (Bankr. N.D. Cal. Dec.  
17 30, 2008); In re Globalign, Inc., Case No. 08-31329-DM (Bankr. N.D. Cal. July 28, 2008); and In  
18 re SecuGen Corporation, Case No. 05-53834-ASW (Bankr. N.D. Cal. July 1, 2005). At this  
19 critical state of the case, the Debtor cannot risk a significant disruption caused by low employee  
20 morale due to the Debtor's failure to pay wages when due.

21 It is important that the Debtor fund the full amount of its current and past-due payroll, as  
22 timely as possible. The Debtors therefore request authorization to fund the full amount of the  
23 past-due November 1 payroll, as well as the payroll that was due on December 1, 2014. To the  
24 extent this is authorized, the shareholders of Metawise are prepared to inject sufficient cash into  
25 the company to fund immediate payroll requirements.

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1 **V. CONCLUSION**

2 WHEREFORE, the Debtors respectfully request that the Court enter an order granting the  
3 relief requested herein, in the form attached hereto.

4  
5 DATED: December 9, 2014

McNUTT LAW GROUP LLP

6  
7 By: /s/ Shane J. Moses  
8 Shane J. Moses  
9 Attorneys for DEBTORS  
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